



# pennsylvania

DEPARTMENT OF ENVIRONMENTAL PROTECTION

BUREAU OF WATERSHED MANAGEMENT

February 16, 2011

Mr. Jon Capacasa, Director  
Water Protection Division  
U.S. Environmental Protection Agency  
Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

Dear Mr. Capacasa:

PADEP is hereby transmitting the proposed final PAG-13 to EPA in accordance with 40 C.F.R. § 123.44 and Section III.4 of the *1991 National Pollutant Discharge Elimination System Memorandum of Agreement between the Commonwealth of Pennsylvania and the United States Environmental Protection Agency Region III* (MOA). It is Pennsylvania's understanding that under the MOA, EPA now has 15 working days, until March 10, 2011, to notify PADEP of any formal objections to PAG-13 in accordance with 40 C.F.R. § 123.44(c).

PADEP is confident that after thorough review and input from EPA, this general permit fully satisfies federal regulatory requirements and addresses EPA's concerns. PADEP therefore expects to publish PAG-13 as final in the March 26, 2011 Pennsylvania Bulletin.

With this transmission, PADEP is also providing an additional copy of the proposed final PAG-13 which shows the changes made to the permit from the November 18, 2010 draft PAG-13 (Draft PAG-13). Although PADEP does not agree that EPA may restart the 90 day review period for EPA review of draft general permits under the terms of the MOA or the federal regulations at 40 C.F.R. § 123.44(a)(2), and reserves the right to assert that EPA forfeited its ability to object to the draft permit after July 13, 2010, in the interest of cooperation, PADEP did make further EPA requested revisions and provides the following responses to the EPA's November 18, 2010 letter (November EPA Letter) on Draft PAG-13:

## ***MS4 Regulated Boundary***

EPA did not request or suggest revisions to the Draft PAG-13 related to issues surrounding the MS4 regulated boundary. PADEP acknowledges EPA's statement of expectations related to the MS4's responsibilities related to regulating and controlling discharges into the system. By this acknowledgement PADEP does not intend to agree that by virtue of an MS4 NPDES permit, municipalities have additional legal authority for such regulation of discharges into their systems beyond what is provided by Pennsylvania law.

***Incorporation of Chesapeake Bay TMDL***

In the November EPA Letter, EPA requested that PADEP remove language pertaining to conformance with the Pennsylvania Watershed Implementation Plan (WIP) in the section of the Authorization to Discharge relating to compliance with the Chesapeake Bay TMDL. As requested by EPA, PADEP has removed this language. EPA did not otherwise recommend specific language be modified or included in this section of Draft PAG-13. PADEP has nonetheless further modified the language of this section to expressly include the requirements of 40 C.F.R. §122.44(d)(1)(vii)(B).

Although PADEP did remove the language Pennsylvania WIP, PADEP suggests that in fact it would be useful to continue to include this language because it is more protective and does require a more stringent performance standard than is required without such a reference to compliance with the WIP for those MS4s that discharge to waters that do not not have localized impairments.

***Liability for Construction and Post-Construction Requirements***

In the November EPA Letter, EPA does not request or recommend specific changes to the Draft PAG-13, nor acknowledge PADEP's November 10, 2010 discussion of the Pennsylvania state Qualified Local Programs ("QLPs") for MCM 4 and portions of MCM 5.

PADEP acknowledges EPA's expectation related to "third party" failure to fulfill obligations under the permit, but does not believe that it addresses the framework of the Pennsylvania program or the nature of an MS4s reliance on Pennsylvania's QLPs for these MCMs.

Nonetheless, PADEP has made further revisions to try to clarify the extent of the Pennsylvania QLPs and MS4's responsibilities under PAG-13 in light of MS4 reliance on the Pennsylvania QLPs in the proposed final PAG-13. Additionally, in recognition of EPA's concerns and with input from PADEP regional offices, the proposed final PAG-13 clarifies and strengthens MS4 obligations under MCM 5 for inspection of PCSM BMPs.

Further, PADEP hereby commits to inclusion of additional permit conditions in the draft renewal of the NPDES general permit for Discharges Associated with Construction Activities (PAG-2) that is currently under informal review by EPA, linking construction permittee obligations related to post construction under Chapter 102 to any overlapping MS4 MCM 5 inspections. Specifically, PADEP proposes to include as a condition of PAG-2 a requirement that at the time a permittee submits a Notice of Termination, which they provide the municipality with the "final certification" and PCSM BMP record drawings required under 102.8(l). Such a link will facilitate an effective MS4 PCSM BMP inspection program in accordance with the requirements of the final proposed PAG-13 requirements for MCM 5.

***TMDL Implementation Plan Content, Review and Approval***

In the November EPA Letter, EPA does not request or recommend specific changes to the Draft PAG-13, but rather simply requests the opportunity to review the first 20 such plans submitted to PADEP. PADEP agrees to provide these plans to EPA prior to PADEP approval.

***Annual Reporting***

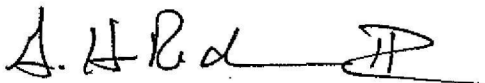
In the November EPA Letter, EPA does not request or recommend specific changes to the Draft PAG-13, but rather confirms the agencies' commitment to revise the annual report forms cooperatively over the

***Stormwater Program Assessment***

PADEP looks forward to the opportunity to participate in EPA's assessment of Pennsylvania's stormwater program as PADEP believes this program has a strong state legal framework and a comprehensive on the ground approach. Although PADEP does not expect PAG-13 will require substantial amendment during its term, PADEP remains open to the possibility of amending the permit should significant issues be identified needing immediate revision as a result of EPA's stormwater program assessment.

PADEP is intending to schedule training on revised PAG-13 throughout the state in late spring and invite you to participate with us in this training.

Sincerely,

A handwritten signature in black ink, appearing to read "G. H. Rider, II", followed by a horizontal line and a stylized flourish.

Glenn H. Rider, II  
Director  
Bureau of Watershed Management

cc: D. McGuigan EPA  
E. MacKnight, EPA